SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 903

JAMES HENRY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari Directed to the United States Court of Appeals for the Ninth Circuit.

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TO THE HONORABLE CHIEF JUSTICE EARL WARREN AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Comes now James Henry and petitions this Honorable Court for a writ of certiorari to review and reverse a judgment finding him guilty of Counts 1, 2 and 4 of receiving motor vehicles moving in and part of interstate commerce, knowing them to have been stolen, in violation of Title 18, Section 659, U.S. Codes.

The judge gave the jury 20 minutes in which to find the verdict (R.T. 296) and it is contended this was unconstitutional psychological pressure. (People v. Dye, 119 Cal.App. 262; Gros v. United States, 136 F.2d 878)

Jurisdiction

Jurisdiction is conferred by Title 28, Section 1254(1), U.S. Codes.

The opinion of the Court of Appeals was rendered May 23, 1966. Although rehearing was denied June 30, 1966, counsel for the appellant and petitioner was not notified and the Court of Appeals, on being so advised, vacated its judgment on November 9, 1966. A copy of said order and notice is attached hereto, marked Appendix A, and made a part hereof. The petition for rehearing was denied on November 30, 1966.

Statutes and Constitutional Provisions Involved

The statutes and constitutional provisions involved are: Title 18, Section 659, U.S. Codes and the Fifth and Sixth Amendments to the Constitution of the United States, all of which are set out in Appendix B, and made a part hereof.

Opinion Below

The opinion of the United States Court of Appeals is contained in 361 F.2d 352. A copy of said opinion is attached hereto as Appendix C, and made a part hereof.

Brief Statement of Facts

Petitioner was charged and convicted of knowingly receiving and possessing 22 packages of pressure regulators which allegedly had been stolen from an interstate shipment of goods. (18 U.S.C. Sec. 659).

The jury, after deliberating, came into court after they were threatened with being locked up over the weekend and further threatened that they would not be able to get their automobiles, which they had left in and around the Federal Building in four different parking lots and

which involved the safety of the automobiles of the jurors. The jurors were given 20 minutes to see if they could arrive at a verdict. (R.T. 292-296) The jurors then came in with a verdict of guilty and the petitioner was given a sentence of three years in the penitentiary.

Petitioner testified in his own behalf but was not asked, nor did he testify, whether or not he knew the regulators which were in issue were stolen. He confronted the prosecution with this opportunity and the presumption of innocence with which he was clothed necessarily must be applied under such circumstances to find that he was and is innocent of the crime. Petitioner testified as follows:

> "This was supposedly junk. John told me he got this stuff, or somebody got this stuff, off of a dump and he was going to break it up for metal and when he told me he was going to break it up for metal I thought maybe I might make a quarter, so this is why I went into it." (R.T. 220)

Implicit in this answer that it was supposedly junk and it came off of a dump was the answer that he did not know it was stolen. Furthermore, the burden of proof that it was stolen was upon the government as an essential part of its case. The government did not meet this burden. (*Coffin v. United States,* 162 US 664, 40 L.ed. 1109)

Questions Presented

1. Whether giving the jurors just 20 minutes to see if they could arrive at a verdict was psychological pressure of such a character as to violate due process of law and fair trial guaranteed by the Fifth Amendment to the Constitution of the United States.

2. Whether giving jurors just 20 minutes to see if they could arrive at a verdict denies petitioner the right to a jury trial as provided for by the Constitution of the United States in its Fifth and Sixth Amendments.

3. Whether a conviction based on a total lack of evidence of any guilty knowledge or guilty intent violates the due process clause of the Fifth Amendment to the Constitution of the United States.

4. Whether the government has met the burden of proof required in a criminal case.

Reasons for Granting the Writ

The Court should grant a hearing in its supervisory capacity over criminal justice to hold that jurors should have unlimited time to see if they can arrive at a verdict, without any pressure, psychological, timewise, or otherwise, or in respect to the protection of their automobiles or the hour when they may go home.

The Court stated in its opinion:

> "The trial judge did urge the jury to return a verdict . . . Some little psychological pressure was put on the jury."

The pressure put on the jury was a time limit within which to return its verdict with a threat to be locked up over the weekend. A second threat was in respect to getting their automobiles which were in four different parking lots near the Federal Building and involved the safety of the automobiles of the jurors. (R.T. 292, 296)

The jurors were given 20 minutes to see if they could arrive at a verdict. (R.T. 296) This type of psychological pressure in securing a confession voided the confession. (*Gros v. United States,* 136 F.2d 878; *People v. Dye,* 119 Cal.App. 262)

Any coercion which induces a verdict, and this certainly did, is in violation of due process of law guaranteed by the Fifth Amendment. See also the following cases: *United States v. Smith,* 303 F.2d 341; *United States v. Dunkel & Co.,* 173 F.2d 506; *United States v. King,* 162 F.2d 594; *United States v. Winters,* 158 F.2d 674; *United States v. Sourcey,* 151 F.2d 899; *Brassfield v. United States,* 262 US 448; *Cook v. United States,* 254 F.2d 871; *Butler v. United States,* 254 US 875; *Stewart v. United States,* 400 F.769; *Nigro v. United States,* 4 F.2d 781.

A second reason for granting the writ is the supervisory power of this Court over criminal justice in holding that guilty knowledge is an essential element for the prosecution to prove in a criminal case and lack of such proof invalidates a conviction. (*People v. Gory,* 28 Cal. 2d 450)

In the *Gory* case, the Supreme Court of California held that guilty knowledge was an essential matter to be proved in connection with the possession of marijuana.

See also: *Bollenbach v. United States,* 326 US 607, 90 L.ed. 350; *Tot v. United States,* 319 US 463, 87 L.ed. 1519.

In *Tot v. United States* this Court held that the mere possession of a pistol coupled with conviction for a prior crime was not evidence proving that the pistol had been shipped or transported in interstate commerce.

In *Bollenbach v. United States* this Court held that an instruction that possession of stolen property in another state than that in which it was stolen, shortly after the theft, raises a presumption that the possessor was the thief and transported stolen property in interstate commerce was erroneous.

In the *Bollenbach* case, the jury was unable to find guilt in the light of the main charge after 7 hours but reached a verdict of guilty under the conspiracy count 5 minutes after their inquiry was answered by an untenable legal proposition.

In the instant case the jury, unable to agree after long deliberation, reached their verdict when they were told they had only 20 minutes to deliberate.

We ask this Court to review the facts and judgment in this case and hold that the judgment is in conflict with the holdings of this Court and that the judgment herein was based upon coercion.

Respectfully submitted,

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